

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 129

Introduced by Senator Wright
(Coauthor: Assembly Member Gomez)

January 23, 2013

An act to amend Section 2881 of the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 129, as amended, Wright. Deaf and disabled telecommunications program.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to oversee administration of the state's telecommunications universal service programs, including the deaf and disabled programs, which are funded through the Deaf and Disabled Telecommunications Program Administrative Committee Fund. Existing law, until January 1, 2014, requires the commission to establish a surcharge, not to exceed ~~0.5%~~, 0.5%, that is uniformly applied to a subscriber's intrastate telephone service charges to allow providers of the equipment and service provided pursuant to the deaf and disabled programs to recover their costs. Existing law, until January 1, 2016, requires the commission to *submit a report* ~~specified information relative to~~ on the fiscal status of the programs to the Legislature on or before December 31 of each year. *Existing law requires the report to include, among other things, an evaluation of options for controlling program expenses and program efficiency, as specified.*

This bill would extend imposition of the surcharge until January 1, 2024 2020. The bill would extend the reporting requirements until January 1, ~~2025~~ 2021, *and would also require the report to include an evaluation of any modification to the program that would maximize participation and funding opportunities under similar federal programs.*

Under the Public Utilities Act a violation of any order, decision, rule, direction, demand, or requirement of the commission by a public utility is a crime.

Because the bill would require an order or decision of the commission to extend the surcharge funding the deaf and disabled programs and because a violation of these requirements would be a crime, the bill would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2881 of the Public Utilities Code is
2 amended to read:
3 2881. (a) The commission shall design and implement a
4 program to provide a telecommunications device capable of serving
5 the needs of individuals who are deaf or hearing impaired, together
6 with a single party line, at no charge additional to the basic
7 exchange rate, to a subscriber who is certified as an individual
8 who is deaf or hearing impaired by a licensed physician and
9 surgeon, audiologist, or a qualified state or federal agency, as
10 determined by the commission, and to a subscriber that is an
11 organization representing individuals who are deaf or hearing
12 impaired, as determined and specified by the commission pursuant
13 to subdivision (h). A licensed hearing aid dispenser may certify
14 the need of an individual to participate in the program if that
15 individual has been previously fitted with an amplified device by

1 the dispenser and the dispenser has the individual's hearing records
2 on file prior to certification. In addition, a physician assistant may
3 certify the needs of an individual who has been diagnosed by a
4 physician and surgeon as being deaf or hearing impaired to
5 participate in the program after reviewing the medical records or
6 copies of the medical records containing that diagnosis.

7 (b) The commission shall also design and implement a program
8 to provide a dual-party relay system, using third-party intervention
9 to connect individuals who are deaf or hearing impaired and offices
10 of organizations representing individuals who are deaf or hearing
11 impaired, as determined and specified by the commission pursuant
12 to subdivision (h), with persons of normal hearing by way of
13 intercommunications devices for individuals who are deaf or
14 hearing impaired and the telephone system, making available
15 reasonable access of all phases of public telephone service to
16 telephone subscribers who are deaf or hearing impaired. In order
17 to make a dual-party relay system that will meet the requirements
18 of individuals who are deaf or hearing impaired available at a
19 reasonable cost, the commission shall initiate an investigation,
20 conduct public hearings to determine the most cost-effective
21 method of providing dual-party relay service to the deaf or hearing
22 impaired when using a telecommunications device, and solicit the
23 advice, counsel, and physical assistance of statewide nonprofit
24 consumer organizations of the deaf, during the development and
25 implementation of the system. The commission shall apply for
26 certification of this program under rules adopted by the Federal
27 Communications Commission pursuant to Section 401 of the
28 federal Americans with Disabilities Act of 1990 (Public Law
29 101-336).

30 (c) The commission shall also design and implement a program
31 whereby specialized or supplemental telephone communications
32 equipment may be provided to subscribers who are certified to be
33 disabled at no charge additional to the basic exchange rate. The
34 certification, including a statement of visual or medical need for
35 specialized telecommunications equipment, shall be provided by
36 a licensed optometrist, physician and surgeon, or physician
37 assistant, acting within the scope of practice of his or her license,
38 or by a qualified state or federal agency as determined by the
39 commission. The commission shall, in this connection, study the
40 feasibility of, and implement, if determined to be feasible, personal

1 income criteria, in addition to the certification of disability, for
2 determining a subscriber's eligibility under this subdivision.

3 (d) (1) The commission shall also design and implement a
4 program to provide access to a speech-generating device to any
5 subscriber who is certified as having a speech disability at no
6 charge additional to the basic exchange rate. The certification shall
7 be provided by a licensed physician, licensed speech-language
8 pathologist, or qualified state or federal agency. The commission
9 shall provide to a certified subscriber access to a speech-generating
10 device that is all of the following:

11 (A) A telecommunications device or a device that includes a
12 telecommunications component.

13 (B) Appropriate to meet the subscriber's needs for access to,
14 and use of, the telephone network, based on the recommendation
15 of a licensed speech-language pathologist.

16 (C) Consistent with the quality of speech-generating devices
17 available for purchase in the state.

18 (2) The commission shall adopt rules to implement this
19 subdivision and subdivision (e) by January 1, 2014.

20 (e) All of the following apply to any device or equipment
21 described in this section that is classified as durable medical
22 equipment under guidelines established by the United States
23 Department of Health and Human Services:

24 (1) It is the intent of the Legislature that the commission be the
25 provider of last resort and that eligible subscribers first obtain
26 coverage from any available public or private insurance.

27 (2) The commission may require the subscriber to provide
28 information about coverage for any or all of the cost of the device
29 or equipment that is available from any public or private insurance,
30 the cost to the subscriber of any deductible, copayment, or other
31 relevant expense, and any related benefit cap information.

32 (3) The total cost of any device or equipment provided to a
33 subscriber under this section shall not exceed the rate of
34 reimbursement provided by Medi-Cal for that device or equipment.

35 (f) Nothing in this section requires the commission to provide
36 training to a subscriber on the use of a speech-generating device.

37 (g) The commission shall establish a rate recovery mechanism
38 through a surcharge not to exceed one-half of 1 percent uniformly
39 applied to a subscriber's intrastate telephone service, other than
40 one-way radio paging service and universal telephone service,

1 both within a service area and between service areas, to allow
2 providers of the equipment and service specified in subdivisions
3 (a), (b), (c), and (i), to recover costs as they are incurred under this
4 section. The surcharge shall be in effect until January 1, ~~2024~~ 2020.
5 The commission shall require that the programs implemented under
6 this section be identified on subscribers' bills, and shall establish
7 a fund and require separate accounting for each of the programs
8 implemented under this section.

9 (h) The commission shall determine and specify those statewide
10 organizations representing the deaf or hearing impaired that shall
11 receive a telecommunications device pursuant to subdivision (a)
12 or a dual-party relay system pursuant to subdivision (b), or both,
13 and in which offices the equipment shall be installed in the case
14 of an organization having more than one office.

15 (i) (1) The commission shall expand the program created by
16 this section to include assistance to individuals with speech
17 disabilities that impair the individual's access to, and use of, the
18 telephone network. The commission shall ensure that
19 speech-generating devices, accessories, and mounting systems,
20 and specialized telecommunications equipment, including infrared
21 telephones, speaker phones, and telephone interface devices, are
22 funded through the program.

23 (2) The commission shall ensure that only individuals who are
24 both residents of the state and speech impaired as certified by a
25 licensed physician, licensed speech-language pathologist, or
26 qualified state or federal agency are eligible.

27 (3) The commission shall provide to each eligible applicant the
28 appropriate equipment consistent with the recommendation of a
29 licensed speech-language pathologist.

30 (4) The commission shall ensure that the equipment provided
31 pursuant to this subdivision is consistent with the economy,
32 efficiency, and quality of equipment that is available for purchase
33 in the state.

34 (j) The commission may direct a telephone corporation subject
35 to its jurisdiction to comply with its determinations and
36 specifications pursuant to this section.

37 (k) The commission shall annually review the surcharge level
38 and the balances in the funds established pursuant to subdivision
39 (g). Until January 1, ~~2024~~ 2020, the commission may make, within
40 the limits set by subdivision (g), any necessary adjustments to the

1 surcharge to ensure that the programs supported thereby are
2 adequately funded and that the fund balances are not excessive. A
3 fund balance that is projected to exceed six months' worth of
4 projected expenses at the end of the fiscal year is excessive.

5 (l) The commission shall prepare and submit to the Legislature,
6 on or before December 31 of each year, a report on the fiscal status
7 of the programs established and funded pursuant to this section
8 and Sections 2881.1 and 2881.2. The report shall include a
9 statement of the surcharge level established pursuant to subdivision
10 (g) and revenues produced by the surcharge, an accounting of
11 program expenses, and an evaluation of options for controlling
12 those expenses and increasing program efficiency, including, but
13 not limited to, all of the following proposals:

14 (1) The establishment of a means test for persons to qualify for
15 program equipment or free or reduced charges for the use of
16 telecommunication services.

17 (2) If and to the extent not prohibited under Section 401 of the
18 federal Americans with Disabilities Act of 1990 (Public Law
19 101-336), the imposition of limits or other restrictions on maximum
20 usage levels for the relay service, which shall include the
21 development of a program to provide basic communications
22 requirements to all relay users at discounted rates, including
23 discounted toll-call rates, and, for usage in excess of those basic
24 requirements, at rates that recover the full costs of service.

25 (3) More efficient means for obtaining and distributing
26 equipment to qualified subscribers.

27 (4) The establishment of quality standards for increasing the
28 efficiency of the relay system.

29 (5) *Any modification to the program in order to maximize*
30 *participation and funding opportunity under similar federal*
31 *programs.*

32 (m) The report described in subdivision (l) that is due no later
33 than December 31, 2013, shall evaluate options for controlling the
34 program costs of providing speech-generating devices and include
35 information on any barriers to participation in the program by
36 eligible subscribers.

37 (n) In order to continue to meet the access needs of individuals
38 with functional limitations of hearing, vision, movement,
39 manipulation, speech, and interpretation of information, the
40 commission shall perform ongoing assessment of, and if

1 appropriate, expand the scope of the program to allow for
2 additional access capability consistent with evolving
3 telecommunications technology.

4 (o) The commission shall structure the programs required by
5 this section so that a charge imposed to promote the goals of
6 universal service reasonably equals the value of the benefits of
7 universal service to contributing entities and their subscribers.

8 (p) (1) The requirement for submitting a report imposed under
9 subdivision (l) is inoperative on January 1, ~~2025~~ 2021, pursuant
10 to Section 10231.5 of the Government Code.

11 (2) A report submitted pursuant to subdivision (l) shall be
12 submitted in compliance with Section 9795 of the Government
13 Code.

14 SEC. 2. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

23 SEC. 3. This act is an urgency statute necessary for the
24 immediate preservation of the public peace, health, or safety within
25 the meaning of Article IV of the Constitution and shall go into
26 immediate effect. The facts constituting the necessity are:

27 In order to avoid administrative and reporting disruptions with
28 respect to the state's deaf and disabled telecommunications
29 universal service programs, to maintain compliance with federal
30 telecommunications universal service program requirements, and
31 to encourage continued investments in the development and
32 manufacture of technology and software that advances the
33 communications capabilities of the deaf and disabled, it is
34 necessary for this act to take effect immediately.